



U.S. Department
of Transportation

**Federal Highway
Administration**

WESTERN FEDERAL LANDS HIGHWAY DIVISION
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FINDING OF NO SIGNIFICANT IMPACT

Anthony Lakes Highway Oregon Forest Highway 133 (3) Milepost 12.7 to Milepost 15.0 Wallowa-Whitman National Forest Baker County, Oregon

Decision

The Western Federal Lands Highway Division (WFLHD) of the Federal Highway Administration (FHWA) has determined that the selected course of action for improving the Anthony Lakes Highway from milepost 12.7 to milepost 15.0, will have no significant impact on the human environment.

The WFLHD has decided to implement Alternative 2, evaluated in the Anthony Lakes Highway Improvement Project Phase 3 Environmental Assessment (EA), amended in April 2005. The selected alternative, including mitigation measures, meets the stated purpose and need of the project while minimizing impacts to the human environment. Comments received through the public involvement process and review of the EA have been considered in this decision.

The selected alternative will upgrade the Anthony Lake Highway from the east end of the North Powder River Bridge (milepost [MP] 12.7) to the Wallowa-Whitman National Forest boundary (MP 15.0). The selected alternative consists of the following actions:

- The road will be designed for a speed of 35 mph, with exceptions.
- The County Road (CR) 1146 portion of the project route (MP 12.7 to MP 14.7) will be reconstructed to a total width of 24 feet, consisting of two 10-foot travel lanes with 2-foot paved shoulders and a 1V: 3H foreslope. Structural deficiencies in the road base and subbase will be repaired and the road will be resurfaced.
- The Forest Road (FR) 73 portion of the project route (MP 14.7 to MP 15.0) will be resurfaced only.
- Rockfall catchment ditches will be constructed along the road in areas having high road cuts through decomposing granite and rock outcrops. The rockfall ditches will be designed following the guidelines in the Oregon Department of Transportation (ODOT) *Rockfall Catchment Areas Design Guide*.
- Hazardous curves will be realigned and widened, and steep grades will be reduced. Minor alignment changes are likely from the area of station 335+00 to around station 345+00. A major alignment shift of approximately 90 feet at its greatest offset from the existing roadway is likely from the area of station 370+00 to the area of station 395+00.
- Alignment adjustments adjacent to the North Powder River will move primarily into the hillside, with possible fill-side retaining wall sections from about stations 327+00 to 336+00. The steep road grade between station 370+00 and station 395+00 will be reconstructed to approximately 9.5%.
- The North Powder River may be armored in areas where the road and stream channel share an embankment. The stream bank armoring will be interplanted with native trees and shrubs to provide stream shading.

- The existing stream-crossing culverts at Gorham Gulch and Little Antone Creek will be replaced with culverts sized to accommodate high water flows. The culvert at Little Antone Creek will be designed for fish passage.
- At the beginning of the project route (station 300+00), the rail system components on the North Powder River Bridge will be upgraded to meet current standards.
- The existing informal parking areas along both sides of the road at the entrance to the Elkhorn Wildlife Area (EWA) will be paved.
- The Forest Service road located on the north side of the highway at station 319 + 00 will be obliterated to facilitate highway alignment changes.
- The entrances to all approach roads will be paved to the edge of the highway right-of-way. The intersections at the Rocky Ford Campground Road, Antelope Peak Road, and Old Anthony Lakes Highway will be realigned to close to 90 degrees.
- Alignment of the Old Anthony Lakes Highway will be shifted up to 16 feet to the north in order to accommodate the new intersection alignment. Between the intersection and the right offset at station 410+2, the Old Anthony Lakes Highway will be reconstructed to a 16-foot width and the road surface will be graveled. The inside ditch line will be reconstructed and culverts will be installed at the junction with CR 1146. The slope between FR 73 and the Old Anthony Lakes Highway will be reshaped and revegetated.
- To the extent that rock slope stability is not jeopardized, new cutslopes will be excavated in a manner that will leave ledges, short benches, pockets, and other slope irregularities on the cut face. This will result in a more naturally-appearing cutslope and provide planting pockets to enhance revegetation.
- Road reconstruction will include clearing of roadside vegetation, cutslope excavation, placement of fill material, construction of low cut and fill walls as needed for stability, digging out failed pavement substructure, placement of new aggregate base and asphalt pavement, graveling of road shoulders, culvert installation, relocation of utilities, installation of guardrails where warranted, road striping, new signs, and revegetation of disturbed areas.
- Disturbed sites will be seeded or planted with native vegetation appropriate for the site.

At this time, construction activities are expected to begin in the spring of 2007; however, clearing of vegetation and relocation of utilities may begin in the fall of 2006. Road construction is expected to be completed in one construction season.

The project will improve roadway structure and provide a durable surface for year-round access to the national forest and its multiple use opportunities, including the expanded Anthony Lakes Mountain Resort. The project will provide a roadway width and alignment that incorporates current standards for safety and drivability, and it will improve roadway and roadside conditions that have led to erosion problems throughout the project route.

Public Involvement

The WFLHD began public involvement in June of 2002 by mailing public notices to approximately 100 individuals, organizations, and agencies that could potentially be interested in the proposed project. A Project Checklist containing preliminary engineering and environmental information about the project was made available for public and agency review in November of 2003. The Project Checklist was discussed at a public open house held in Baker City, Oregon in December of 2003. In December of 2004, the EA was made available for public and agency review, and a public open house regarding the EA was held in Baker City, Oregon in January of 2005. Public and agency comments received during the scoping period were incorporated into the amended EA.

Major Environmental Issues

Threatened and Endangered Species

In accordance with the Endangered Species Act of 1973 as amended (ESA), the WFLHD consulted with the U.S. Fish and Wildlife Service (FWS) regarding the potential effects of the project on the federally listed threatened and endangered species that may occur in or near the project area. A biological assessment (BA) was prepared to evaluate these effects. In its letter of November 12, 2004, the FWS concurred with the WFLHD determination of **may affect, but is not likely to adversely affect** for bull trout (*Salvelinus confluentus*). The project area does not include any designated bull trout critical habitat. Based on the amended EA, the selected alternative will not have a significant impact on bull trout. In addition, the project will have **no effect** on Spaulding's catchfly (*Silene spaldingii*), Macfarlane's four-o'clock (*Mirabilis macfarlanei*), Howell's spectacular thelypody (*Thelypodium howellii spectabilis*), bald eagle (*Haliaeetus leucocephalus*), Canada lynx (*Felis lynx*), and gray wolf (*Canis lupus*).

The FWS concurrence is dependent upon implementation of the project and mitigation measures as described in the amended EA and adherence to the terms, conditions, and best management practices outlined in its letter.

The WFLHD will implement the following mitigation measures, described in the amended EA, to avoid impacts to threatened and endangered species .

- The North Powder River Bridge will be enclosed during bridge paving and rehabilitation to prevent construction debris from entering the river.
- There will be no fueling or storage of petroleum products within the North Powder River floodplain to avoid spilled petroleum from entering the river. The contractor will have a spill containment kit onsite at all times.
- Appropriate sediment and erosion control Best Management Practices (BMPs) will be put into place before construction begins and will be maintained throughout the construction period in order to reduce the amount of construction-related sediment entering the streams.
- All disturbed sites will be revegetated promptly using species appropriate to the site. Seeded areas will be covered by a mulch or tackifier to prevent erosion prior to reestablishment of vegetation. Erosion controls will be left in place until vegetation becomes reestablished

Cultural Resources

An historic properties inventory was conducted within the area of project effects (APE) of the proposed highway alignment in 2002. The inventory identified three archaeological sites that might be impacted by proposed construction. Test excavations were carried out at these sites in 2003. The test excavations determined that there were no significant archaeological deposits present at two of the sites (35BA1092 and 35BA1078). Although historic artifacts were recovered from the third site (35BA1077), it was determined that no significant cultural deposits would be impacted by highway construction. The archaeological investigations concluded that there would be no adverse effects to any of the archaeological sites located within the APE of the project. In its July 23, 2004 letter, the Oregon State Historic Preservation Office (SHPO) agreed that the project will have **no effect** on sites 35BA1092 and 35BA1078 and **no adverse effect** on site 35BA1077 provided that all mitigation measures are implemented during construction to avoid harm to the sites. In addition, the SHPO concluded that the project will have **no effect** on a fourth site (35BA1093), which is outside of the APE.

The WFLHD consulted with the Nez Perce Tribal Executive Committee and the Confederated Tribes of the Umatilla Indian Reservation Board of Trustees concerning the project. The WFLHD archaeologist met with the archaeological program director of the Confederated Tribes of the Umatilla to discuss the project and archaeological survey findings. The WFLHD sent letters to both tribes relaying the results of the field inventory and proposed recommendations for effect to historic

and cultural properties. Copies of the archaeological test excavation report were sent to each tribal government. Neither tribe voiced concerns regarding the proposed project.

The WFLHD will implement the following mitigation measures, described in the amended EA, to avoid impacts to cultural resources.

- The cabin site will be highlighted on construction plans as a special environmental site and a visible barrier will be constructed to insure that no disturbance takes place outside of the construction limits.
- If any important cultural material is encountered during road construction, all activities will stop and an archaeologist will be contacted to evaluate the discovery.

Section 4(f) Properties

Two section 4(f) properties are located in the project area. The Elkhorn Wildlife Area (EWA) is located north of the Anthony Lakes Highway directly adjacent to approximately the first 1,200 feet of the project route. The EWA is owned and managed by the Oregon Department of Fish and Wildlife (ODFW) and qualifies as a section 4(f) property as a wildlife refuge. The second section 4(f) property is archaeological site 35BA1077, which is located adjacent to the proposed project route near Little Antone Creek. Since the site may be eligible for the National Register of Historic Places it is considered a Section 4(f) property.

The WFLHD prepared a separate programmatic section 4(f) evaluation for this project. The document describes the potential effects of the project on the section 4(f) properties, evaluates project alternatives, and outlines measures to be taken to minimize harm to these resources. The document explains that due to right-of-way discrepancies, the property boundary of the EWA is located within the existing roadway. The build alternative will use approximately 0.3 acres of EWA property. The programmatic section 4(f) evaluation determined that there is no feasible and prudent alternative to the minor use of EWA land, and that the proposed action includes all possible planning to minimize harm to section 4(f) lands resulting from project use. The archaeological site is located outside of the construction limits and will not be directly impacted by the project. In addition, the project will cause no proximity impacts to the archaeological resource. The *Programmatic Section 4(f) Evaluation Anthony Lakes Highway OR PFH 133(3)* is located in the project file. Information presented in this document was considered in making the project decision.

In its May 10, 2005 letter, the ODFW concurred that the amount and location of the EWA land used in this project will not impair the use of the remaining wildlife area for its intended purpose. In addition, it agreed with the mitigation outlined in the programmatic section 4(f) evaluation as compensation for use of wildlife area property for transportation purposes. Since a portion of the funding used for purchase of the EWA was provided by the Federal Aid in Wildlife Act (Pitman-Robertson Act), the U.S. Fish and Wildlife Service also provided its concurrence to ODFW (May 3, 2005).

In its July 23, 2004 letter, the SHPO agreed that the project will have **no adverse effect** on the Section 4(f) historic site provided that all mitigation measures are implemented during construction to avoid harm to the site.

The WFLHD will implement the following mitigation measures, described in the amended EA, during project construction to avoid impacts to Section 4(f) properties and to compensate the EWA for use of wildlife area property.

- The road will be designed to minimize harm to the EWA.
- The WFLHD will rebuild the EWA fence and gate along the right-of-way boundary.
- The WFLHD will compensate the ODFW for loss of wildlife area property over and above the purchase of appropriate right-of-way.
- The cabin site will be highlighted on construction plans as a special environmental area and a visible barrier would be constructed to insure that no disturbance takes place outside of the construction limits.

Migratory Bird Treaty Act: The project will involve clearing of potential nesting trees on approximately 16 acres along the project route. Migratory birds may also nest under bridges. Work on the North Powder River Bridge involves upgrading the guard rails to meet current standards. No work will be performed on the under-side of the bridge or on bridge abutments; however, this work could potentially disturb birds nesting under the bridge during its construction.

Cutting of trees would be timed to avoid critical nesting periods (April 1 through July 15). Nets will be placed under the bridge prior to April 1 in order to prevent birds from nesting there during the construction period.

Wetlands: There are no wetlands within the construction limits of the proposed project and no wetlands will be directly or indirectly affected by road construction.

Environmental Justice: Road construction would not have a disproportionately high or adverse impact on minority or low income populations. No residences or businesses would be displaced or relocated as a result of the project. Negative impacts and benefits of the project would affect all road users equally.

Prime Farmland, Rangeland, and Forest Land: The project area does not contain prime farmland, rangeland, or forest land.

Irreversible or Irretrievable Commitment of Resources: A minor amount of fossil fuels, an irretrievable resource, would be used in road construction machinery. The temporary use of fossil fuels would not appreciably reduce their future availability.

Permits and Approvals

The following permits and approvals will be obtained by the FHWA prior to construction of this project:

- Section 404 Permit - US Army Corps of Engineers
- Removal/Fill Permit - Oregon Division of State Lands
- National Pollution Discharge Elimination System Permit and 401 Water Quality Certification - Oregon Department of Environmental Quality
- Applicable U.S. Forest Service, county, and local permits and approvals.

In its February 2, 2005 letter to WFLHD, the Baker County Commissioners recommended Alternative 2-Build Alternative, saying that it meets Baker County's desired purpose and need for the proposed improvement of the Anthony Lakes Highway, Phase 3. The U.S. Forest Service expressed support for Alternative 2-Build Alternative in its April 8, 2005 letter to WFLHD, adding that the Anthony Lakes Highway is an integral part of the Elkhorn Drive Scenic Byway. .

Finding of No Significant Impact

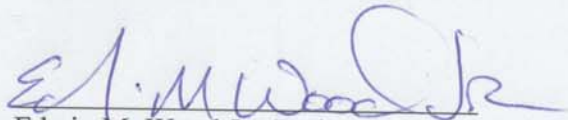
Pursuant to the National Environmental Policy Act of 1969, WFLHD has assessed the environmental impacts of the proposed project. The environmental assessment was prepared in accordance with the Council on Environmental Quality (CEQ) NEPA Regulations set forth in 40 CFR parts 1500 to 1508 and Federal Highway Administration regulations contained in 23 CFR part 771. The proposal also conforms with all applicable federal statutes and executive orders. Based on the EA, and in accordance with guidelines for determining the significance of proposed federal actions (40 CFR 1508.27), WFLHD has concluded that the selected alternative will not result in a significant effect on the human environment. As a result of these findings, WFLHD has determined that an environmental impact statement is not required by section 102(2) of NEPA or its implementing regulations. The WFLHD takes full responsibility for the accuracy, scope, and content of the attached EA.

RECOMMENDED BY:


George Fekaris, Design Operations Engineer

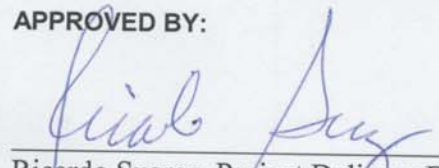
5/12/05
Date

CONCURRED BY:


Edwin M. Wood Jr., Project Development Engineer

5/20/05
Date

APPROVED BY:


Ricardo Suarez, Project Delivery Director
Western Federal Lands Highway Division

5/20/05
Date